

# EXHIBIT 4

IN THE DISTRICT OF THE UNITED STATES OF AMERICA  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

	)	
<b>D.W.K., Jr. and parents Mary &amp;</b>	)	
<b>Daniel Kaleta,</b>	)	
	)	
	)	
Plaintiff(s),	)	Case No. <b>14-847-NJR-SCW</b>
	)	
vs.	)	
	)	
<b>ABBOTT LABORATORIES, INC.,</b>	)	
	)	
Defendant(s).	)	
	)	

**TRIAL DAY 6-a.m. session**

BE IT REMEMBERED AND CERTIFIED that heretofore on **3/9/2014**,  
the same being one of the regular judicial days in and for the  
United States District Court for the Southern District of  
Illinois, **Honorable Nancy J. Rosenstengel**, United States  
District Judge, presiding, the following proceedings were  
recorded by mechanical stenography; transcript produced by  
computer.

**REPORTED BY: Molly N. Clayton, RPR, FCRR**, Official  
Reporter for United States District Court, SDIL, 750 Missouri  
Ave., East St. Louis, Illinois 62201, (618)482-9226,  
*molly\_clayton@ilsd.uscourts.gov*

1           So a number of things happened on Friday, and I want  
2 to talk about those first before we get into the other things  
3 that we need to address. And I think I needed to sort out  
4 exactly what happened, and that's why I took the second motion  
5 for mistrial under advisement, and I've given it significant  
6 thought over the weekend.

7           So, first, as I see it, there are two issues that  
8 arose from Dr. Oakley's testimony. First is the admission of  
9 irrelevant and potentially unfairly prejudicial evidence by his  
10 mention of Thalidomide. So the question is whether this  
11 incident, in the context of the entire trial, is so serious as  
12 to warrant a mistrial.

13           Now, there was the first statement in direct  
14 examination, which we then went to sidebar on. And as I  
15 mentioned at first I thought a cautionary instruction at that  
16 point might only seek to highlight the word. But then after it  
17 was said again, and Mr. Williams jumped up and told the witness  
18 he shouldn't say that, I think the jury knows that the witness  
19 said something he should not have. And I think there's a need  
20 to explain that to them. And so for that reason I believe at  
21 this point a curative instruction is important. I presume that  
22 the jury will follow an instruction to disregard inadmissible  
23 evidence, just as I presume it will follow any other  
24 instructions that I give to them.

25           So having reviewed the official transcript over the

1 weekend, I do not believe that the effect of this evidence  
2 mentioned briefly on one of the first days of trial will be  
3 devastating or cause prejudice to Abbott's substantial rights.  
4 These statements do not create a real likelihood of preventing  
5 the jury from evaluating all of the evidence that has been and  
6 will be presented to them over the next several weeks fairly  
7 and accurately such that Abbott has been deprived of a fair  
8 trial. Nonetheless, I'm going to strike that portion of  
9 Dr. Oakley's testimony, and the jurors will be instructed that  
10 this evidence is not part of their fact-finding mission and  
11 that they should disregard it entirely.

12 Now, I have crafted a curative instruction that I will  
13 have Deana pass out. This is just my attempt at doing so, and  
14 I welcome counsels' input. So I'll let you be looking at that.  
15 But as I said, there are really two issues, and the second one  
16 is a violation of my order on the motion in limine. And this I  
17 view as much more serious than Dr. Oakley's brief mention of  
18 Thalidomide. So I went back and I read my orders and, really,  
19 Friday was the second violation of my order on the motion in  
20 limine.

21 The first was in voir dire, when Mr. Fibich mentioned  
22 the size of Mr. Ball's law firm, which was an agreed motion in  
23 limine, Plaintiffs Number 16, that we wouldn't refer to  
24 resources of the firms, and I really didn't think there was any  
25 dispute. It was agreed. So at this point I have serious

1 concerns that plaintiffs either have not read, or at least have  
2 not absorbed the content of the orders on the motions in  
3 limine. As I said, there were technically over 60-some motions  
4 in limine that I ruled on before trial, if you take  
5 plaintiffs', with all their subparts, and then Abbott I think  
6 had 22 standing alone.

7 So at this point I'm going to believe that that's  
8 inadvertent and not intentional. But as I said, I have grave  
9 concerns about whether plaintiffs are taking those rulings  
10 seriously. As to Friday, that was a violation of Abbott's  
11 Motion in Limine Number 14, which just technically I reserved  
12 ruling on parts of it, but I noted that the evidence is likely  
13 not relevant. And I said plaintiffs will not be allowed to  
14 introduce evidence of drugs that have been withdrawn from the  
15 market in order to argue that these drugs are in any way  
16 similar to Depakote. I think that's pretty clear. And then I  
17 also said, "For this reason, any mention of drugs that have  
18 been withdrawn from the market should be brought to the Court's  
19 attention before the evidence is offered or the testimony is  
20 elicited."

21 Now, when we went to sidebar before Dr. Oakley made a  
22 statement, I understood Mr. Strain's objection to be that he  
23 was objecting that Dr. Oakley was going to testify that he  
24 thought Depakote would be withdrawn because that was outside  
25 the scope of his opinion. But certainly plaintiffs' counsel

1 should have known that that might be where he was going, but I  
2 mean I assumed, because lawyers have an obligation to tell  
3 their witnesses what evidence has been excluded, that  
4 Dr. Oakley knew that. And the fact that plaintiffs' public  
5 health expert wasn't apparently counseled, that that evidence  
6 has been excluded, is simply unacceptable.

7 Mr. Fibich's argument that because Thalidomide is back  
8 on the market today makes the testimony admissible is  
9 ridiculous. It was clearly a violation of the order. And why  
10 I'm concerned that they haven't read it is because in voir dire  
11 Mr. Fibich said he didn't know that size and resources of law  
12 firms was excluded. And on Friday Mr. Williams said he didn't  
13 know that the witness was going to mention Thalidomide. So  
14 whether you think it is not intentional but it is certainly not  
15 the -- not what I would expect from counsel.

16 So I guess now that we are getting ready to go to  
17 Dr. Blume, Counsel, whoever wants to speak, has Dr. Blume been  
18 advised about the motions in limine?

19 MR. BOUNDAS: Your Honor, we have advised Dr. Blume  
20 about the motions. Specifically we spoke with her multiple  
21 times about it and wrote out a list of things that were  
22 appropriate.

23 THE COURT: Okay. Because now she is a labeling  
24 expert and the post-1999 labels have been excluded. Does she  
25 understand that?

1 and gentlemen. I hope you had a good weekend and got some rest  
2 and fresh air and enjoyed the sunshine. Everybody ready to go?

3 Okay. Well, before we begin today, I'm going to have  
4 a few instructions for you today, like I've done before, where  
5 I read something to you. Then we will proceed with the  
6 testimony.

7 Ladies and gentlemen, during his testimony,  
8 Dr. Oakley -- he was the live witness that we had here on  
9 Friday -- mentioned a drug that has been -- that was withdrawn  
10 from the market several days ago -- okay. I'm going to start  
11 over. It is Monday.

12 Ladies and gentlemen, during his testimony, Dr. Oakley  
13 mentioned a drug that was withdrawn from the market several  
14 decades ago. That drug has absolutely nothing to do with this  
15 case. It is not relevant to any issue that you will be asked  
16 to decide. For that reason, I have stricken that portion of  
17 Dr. Oakley's testimony from the record. It is not evidence in  
18 this case and must not be considered.

19 Now, I think we are going to the -- we ended Friday  
20 with a video deposition of a Michael Murray, and we have just  
21 another portion of that to play for you at this point.

22 *(Exhibit Number 2477, corrected portion, played to the jury)*

23 THE COURT: Okay. That's it?

24 MR. BALL: Yes.

25 THE COURT: So, ladies and gentlemen, I have now

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REPORTER'S CERTIFICATE

I, Molly N. Clayton, RPR, FCRR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported with mechanical stenography the proceedings contained in pages 1181 - 1329; and that the same is a full, true, correct and complete transcript from the record of proceedings in the above-entitled matter.

DATED this 10th day of March, 2015.

s/Molly Clayton, RPR, FCRR